

October 25, 2017

Ms. Kelly Baxter
Johnson, Mirmiran, & Thompson
40 Wight Ave.
Hunt Valley, MD 21030

Re: Cromwell Water Pumping Station Rehabilitation
Forest Conservation Variance
Tracking # 03-17-2582

Dear Ms. Baxter:

A request for a variance from Baltimore County Code Article 33 Environmental Protection and Sustainability (EPS), Title 6 Forest Conservation concerning the referenced project was received by this Department on September 21, 2017. This request proposes to remove 7 specimen trees for the purpose of expanding and improving an existing water supply pumping station and the related infrastructure. These trees include 4 *Juglans nigra* from 30 to 36.8 inches diameter at breast height (DBH), 2 *Liriodendron tulipifera* of 34.5 and 38.3 inch DBH, and a 34.1-inch DBH *Platanus occidentalis*. The project site is located along Minebank Run in the Gunpowder Falls watershed.

The Director of EPS may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of beneficial use of his property. The public water supply pumping station existed at this location prior to the forest conservation law. The facility needs to be expanded and improved to meet public water supply needs. This improvement could not occur without removal of the specimen trees and thus would deprive the petitioner of beneficial use of the site. Therefore, we find that this criterion has been met.

The second criterion (Subsection 33-6-116 (d)(2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general conditions of the neighborhood. Construction of the water pumping station improvements and related infrastructure is on and directly adjacent to an existing water pumping station site. This pumping station existed for many years prior to the forest conservation law. This

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represents unique circumstances associated with the subject project site rather than general conditions in the neighborhood. Therefore, the second criterion has been met.

The third criterion (Subsection 33-6-116(d)(3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The petitioner proposes expansion and improvement of an existing public water pumping station. The project site is surrounded by a park. The proposal to remove 7 specimen trees as part of the proposed redevelopment of the site will not change the character of the neighborhood. Public uses in the project area will remain the same. Therefore, the essential character of the neighborhood is not affected and the third criterion is met.

The fourth criterion (Subsection 33-6-116(e)(1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The public water pumping station development will be required to meet all sediment and erosion control and stormwater management requirements. In addition, the forest buffer, stream, and wetland buffer impacts must meet mitigation requirements to include re-stabilization of the stream, outfall area, and buffer, and payment of a fee-in-lieu to be used for off-site mitigation. Also, the development must meet all forest conservation requirements, including mitigation for specimen trees removed. The applicant proposes payment of a fee-in-lieu to the Baltimore County Forest Conservation Fund to meet these requirements. Therefore, with mitigation and fees-in-lieu for water quality improvements, granting of the special variance will not adversely affect water quality, and this criterion has been met.

The fifth criterion (Subsection 33-6-116(e)(2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions on the property that have resulted in the need for this variance request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33 of the Baltimore County Code. When considering the site constraints and the siting requirements for this public water pumping station improvement project, the applicant has minimized impacts to the extent possible to have a viable facility. The project must meet all forest conservation requirements for the project. Therefore, this criterion is met.

Based on our review, this Department finds that all of the above criteria have been met. Therefore, the requested variance is hereby approved, in accordance with Section 33-6-116 of the Baltimore County Code, with the following conditions:

1. Add the following note to all plans for this project: "A Forest Conservation Special Variance was approved by the Baltimore County Department of Environmental Protection and Sustainability to allow the removal of 7 specimen trees. Mitigation was accomplished through the payment of a fee-in-lieu."

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2. Mitigation for forest clearing, including removal of specimen trees, must be mitigated by payment of a fee-in-lieu of \$44,313.50 to the Baltimore County Forest Conservation Fund prior to the approval of any permit for this project.
3. A Forest Conservation Plan for this project must be approved prior to any permit approval.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and an amended variance request.

Please have the property owner sign the statement at the end of this letter, and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

If you have any questions regarding this correspondence, please contact Paul Dennis at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL/pad

c: Marian Honeczy MDDNR

I/we agree to the above conditions to bring the referenced project site into compliance with the Baltimore County Forest Conservation Law.

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| City of Baltimore Responsible Party Signature | Date | Printed Name |
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